Supreme Court, U.S.
FILED
JUN 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

NO. 86-1884 (3)

JAMES A. GORDON, JR.,

Petitioner,

vs.

WILLIAM W. DAVIS, et al,

Respondents.

MEMORANDUM OPPOSING CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

Petitioner is a former California attorney who was disbarred by order of the Supreme Court of California on July 1, 1982, as reported in Gordon v. State Bar of California, 31 Cal.3d 748, 647 P.2d 137, 183 Cal. Rptr. 861 (1982). Instead of timely seeking review of that order by this Court pursuant to 28 U.S.C. §1257 (1987), petitioner some three years later filed a so-called civil rights (i.e., 42 U.S.C. §1983) action in the United States District court for the Central District of California alleging that in the attorney disciplinary proceedings conducted by respondent State Bar of California and in the subsequent proceedings before respondent Supreme Court of California to review the report and recommendations of the State Bar, petitioner was denied a fair hearing in violation of his federal constitutional rights to due

process and equal protection. Named as defendants in the action were the State Bar and the California Supreme Court, the State Bar staff attorney who presented the charges against petitioner, the State Bar hearing officer who preliminarily considered the complaints against petitioner and decided that formal charges should be brought, the Clerk of the California Supreme Court and the individual justices of the Court who were sitting at the time and who reviewed petitioner's matter and ordered that he be disbarred. By his prayer petitioner sought injunctive relief in the form of the federal district court's order requiring that the defendants "...reinstate [petitioner's] right to practice law in the State of California..."; and in addition petitioner sought recovery of $1,000,000 compensatory and $1,000,000 punitive damages from each of

the defendants for the alleged deprivation of his federal constitutional rights.

It is respectfully submitted that the United States Court of Appeals for the Ninth Circuit correctly concluded in its unpublished memorandum opinion that the district court properly dismissed petitioner's action and that petitioner's suit was a "...misuse of the Civil Rights Act..." As this court recently affirmed in D.C. Court of Appeals v. Feldman, 460 v.s. 462, 482-486 (1982), federal district courts have no authority (i.e., subject matter jurisdiction) to review final determinations of state high courts in attorney admission and disciplinary proceedings. Quite clearly petitioner's first amended complaint in his civil rights action did not present a general challenge to the constitutionality of state bar disciplinary rules, but sought to reverse the application of the rules in

his particular case. Accordingly, it was properly dismissed.

Finally, it is submitted that consistent with well established law, the Ninth Circuit correctly concluded that each of the defendants was absolutely immune from liability for damages in plaintiff's civil rights action under the doctrine of judicial acts (i.e., quasi-judicial) immunity. As the Ninth Circuit noted, while other grounds for dismissal existed, there was no need to mention them.

The instant petition for writ of certiorari is not well founded and should be denied.

Dated: 6/22/87

Respectfully submitted,

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By Robert M. Sweet

Attorneys for Respondents
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State Bar of California

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PROOF OF SERVICE

I hereby declare that on the 25 day of June 1987, I served three copies each of the within Memorandum Opposing Certiorari by enclosing them in sealed envelopes, postage prepaid, in the U.S. Mail at Pasadena, CA addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Pasadena, California on the 25 day of June 1987.

Robert A. Sweet